IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.725 of 2000.

Date of Decision :20th November, 2007.

State of H.P. …Appellant.

Versus:

Om Parkash. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Ashok Chaudhary, Addl. Advocate General. .

For Respondent.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 19th January, 2000 passed by Judicial Magistrate, Ist Class, Dharamshala in Criminal Case No. 55-II/99 titled as State of H.P. Vs. Om Parkash acquitting the accused of the charged offence under Sections 498-A and 506 of the Indian Penal Code.

As per the case of the prosecution complainant-Rekha Devi was married to the accused and out of the wedlock a daughter was born. Due to certain matrimonial differences, complainant-Rekha Devi was living at her parental house along with her mother. On 2nd October, 1998, the accused visited the house of his mother-in-law in village Bhanalla and caught hold of the complainant by throat and tried to kill her. He has been maltreating the complainant ever since they

[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

were married. An F.I.R. Ext. PW-6/A was registered at Police Station, Shahpur, H.P. under Sections 498-A and 506 I.P.C on the basis of a complaint lodged by the complainant, her mother Smt.Kirna Sharma and brother-in-law Shri Anoop Kumar.

On the completion of the investigation, the challan was presented in the Court for trial and the charges against the accused under Sections 498-A and 506 of the Indian Penal Code were framed. The accused pleaded not guilty and claimed trial.

In order to prove its case, the prosecution in all, examined six witnesses and the statement of the accused under Section 313 Cr.P.C. was also recorded.

Rekha Devi (PW-1) is the complainant, Smt.Kiran Sharma (PW-2) and Versha Sharma (PW-3) are the mother and sister of PW-1. Kuldeep Kumar (PW-4) and Chanchla Devi (PW-5) are the neigbhours of PW-1.

Through the statement of PW-1, it has come on record that she is the wife of the accused and has a three years old child born out of the wedlock. She is residing along with her mother in her parental house. She has deposed that on 2nd August, 1998 the accused caught hold of her throat and pressed the same in order to kill her. She raised hue and cry and on hearing the same, her sister PW-3 and mother PW-2 arrived at the spot. According to her the neigbours had witnessed the incident but had refused to make any statement before the Police. In her cross-examination she has however admitted that she had not disclosed it to her mother that the accused had been treating her with cruelty and give beatings. She has admitted the suggestion put to her, that her brother-in-law is a practicing Advocate

in the High Court of Allahabad and the complaint was lodged at his instance.

PW-1 has also deposed that her husband used to make demands for money. PW-2 has corroborated the version of PW-1. However, PW-2 has stated that the accused used to demand land as dowry.

There are contradictions in the statements of PW-1 and PW-2 with regard to the demand of money. Both these witnesses in fact have improved upon their statements made before the Police recorded under Sections 154 Cr.P.C. and 161 Cr.P.C. In the Statements as also the F.I.R. there is no allegation with regard to maltreatment of the complainant and demand of dowry by the accused.

PW-3 has also improved her statement inasmuch as she has stated that the accused used to threaten PW-1 that by pouring kerosene and putting her on fire he would kill her. This fact is also missing in her statement recorded under Section 161 Cr.P.C.

Kuldeep Kumar (PW-4) is not the eye witness and has only deposed what was narrated to him by the complainant. This witness in fact has stated that ever since their marriage he had seen both the complainant and the accused visit the house of PW-2 together and had in fact never seen them quarrelling with each other. He has deposed that PW-2 and PW-3 were living alone. As per this witness the relations were cordial. The story of the prosecution, therefore, stands falsified. As per the prosecution PW-1 had left the matrimonial home and was residing in her parental house along with PW-2 where the alleged incident is stated to have taken place. Through this witness another version has come on record. PW-1 has admitted that she

never disclosed it to her mother that he accused had been beating her. This renders the occurrence of the incident doubtful. The Investigating Officer has not deposed that the independent witnesses to the incident had refused to associate with the investigation. . Chanchla Devi (PW-5) has also not supported the case of the prosecution and in spite of the fact that she was declared hostile and allowed to be cross-examined by the Public Prosecutor nothing incriminating has come out to show the complicity of the accused in the commission of the alleged offence. In her cross-examination even she has stated that the relations between the parties were cordial and she never saw the accused giving beatings to the complainant. She is an immediate neighbour of PW-2.

The interested witnesses who are close relatives have improved their versions and also contradicted themselves. Their statements are not trust worthy and cannot be relied upon for the purpose of convicting the accused for the charged offence. It cannot be said that the prosecution has been able to prove the case beyond reasonable doubt. The accused has been acquitted by the court below.

The court below has appreciated the material on record in its entirety while arriving at its conclusion. I see no reason to interfere with the same. The appeal is accordingly dismissed. The bail bonds are discharged.

(Sanjay Karol),
Judge.

November 20, 2007(R)